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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE: APPLICATION FOR AN ORDER
AUTHORIZING THE USE OF A POLE
CAMERA

No.

APPLICATION

CR 11 90 60 6 MISC

ME!

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: APPLICATION FOR AN ORDER
AUTHORIZING THE USE OF A POLE
CAMERA

No.

APPLICATION

I, Randy S. Luskey, an Assistant United States Attorney in the Northern District of California, hereby apply to the Court for an Order authorizing the maintenance and use of pole-mounted video cameras ("pole cameras") and related equipment and dial-up phone lines for a period of 90 days on the following utility pole that Pacific Gas and Electric owns, leases and/or maintains in Alameda County, California:

- a) **Pole Number 110136626** located in the vicinity of 1759 Seminary Avenue, Oakland, California.

These cameras, which will not have audio capabilities, will be used to conduct and/or record visual surveillance of the exterior of buildings (entrances/exits) and public thoroughfare areas in the vicinity of 1759 Seminary Avenue, Oakland, California. The phone lines will be used to transmit images obtained by the cameras but not to transmit conversations or other audio.

This Application and the attached Order are authorized by the All Writs Act, 28 U.S.C. §

APPLICATION

1 1651(a).¹

2 In support of this Application, I declare the following:

3 1. I am an "attorney for the government" as defined in Rule 1(b) of the Federal Rules
4 of Criminal Procedure.

5 2. I certify that the information likely to be obtained from the maintenance and use
6 of the requested pole cameras and related equipment and dial-up telephone lines is relevant and
7 material to an ongoing criminal investigation being conducted by the Federal Bureau of
8 Investigation ("FBI"). This assertion is based upon the following facts related to me by agents
9 participating in this investigation:

10 A. The FBI is conducting an investigation into possible violations of federal criminal
11 statutes, including Title 18 U.S.C. Section 1961 (RICO activity) and Title 21, U.S.C. Sections
12 841(a)(1) and 846 (narcotics trafficking) by Henry CERVANTES, Daniel PEREZ, Fernando
13 RANGEL, Andrew CERVANTES, Alberto LAREZ and others known and unknown, believed to
14 be members and associates of the *Nuestra Familia* prison gang.

15 B. During this investigation, agents have used several techniques, including surveillance and
16 monitoring the precise location of many telephones used by targets of this investigation. Those
17 investigative techniques have helped agents to locate and identify residences, vehicles,
18 co-conspirators, and methods of narcotics trafficking associated with the *Nuestra Familia* gang.

19 C. Agents believe that Henry CERVANTES, a/k/a "Happy", and Fernando RANGEL, both
20 members of the *Nuestra Familia* who are currently out of custody on supervised release, are
21 currently serving as Regimental Commanders for *Nuestra Familia* street operations. Henry
22 CERVANTES has been in contact with other *Nuestra Familia* members currently incarcerated,

23
24 ¹ The All Writs Act, 28 U.S.C. § 1651(a), provides that "the Supreme Court and all
25 courts established by Act of Congress may issue all writs necessary or appropriate in aid of their
26 respective jurisdictions and agreeable to the usages and principles of law." See United States v.
27 New York Telephone Co., 434 U.S. 159, 172 (1977) (federal courts may issue orders under the
28 All Writs Act "as may be necessary or appropriate to effectuate and prevent the frustration of
orders it has previously issued in the exercise of its jurisdiction"); Adams v. United States, 317
U.S. 269, 273 (1942) (All Writs Act may be applied to "achieve all rational ends of law");
Hamilton v. Nakai, 453 F.2d 152, 157 (9th Cir.1971) (court's powers under the All Writs Act
"should be broadly construed"), cert. denied, 406 U.S. 935 (1972).

1 including Daniel PEREZ and Andrew CERVANTES, as well as a *Nuestra Familia* member who
2 has been recently released named Alberto LAREZ. The government is investigating possible
3 criminal activity based on the fact that Henry CERVANTES has discussed with these individuals
4 their desire to set up an organization controlled by *Nuestra Familia* and for Henry CERVANTES
5 to maintain and/or establish contact with other *Nuestra Familia* members who have been
6 released from custody. Of course, it is a separate violation of federal law that Henry
7 CERVANTES has any communication with any felons since those communications violate a
8 condition of his release. *See* 18 U.S.C. Section 3583. Agents believe that Henry CERVANTES
9 and RANGEL currently live at and manage an apartment complex at 1759 Seminary Avenue in
10 Oakland, California. Investigation has determined that CERVANTES and RANGEL are
11 extremely conscious of surveillance activities and may be employing lookouts to alert them when
12 people are coming to the apartment complex. Based on intercepted mail and phone calls from
13 incarcerated *Nuestra Familia* Captains Andrew CERVANTES, Daniel PEREZ, and Sheldon
14 "Skip" VILLANUEVA, the FBI has learned that RANGEL and Henry CERVANTES are
15 attempting to establish a drug trafficking organization and are sending proceeds from their drug
16 trafficking activities to the bank accounts of these *Nuestra Familia* Captains.

17 D. The foregoing facts have led agents to believe that the information collected from the
18 maintenance and continued use of the requested pole cameras and related equipment and dial-up
19 telephone lines at 1759 Seminary Avenue, Oakland, California is likely to assist them in
20 identifying other participants in the suspected drug trade and racketeering activity and the
21 vehicles and methods they use to commit the aforementioned offenses. Furthermore, agents
22 believe that the requested pole cameras and related equipment and dial-up telephone lines will
23 continue to provide an element of security for agents and officers who may conduct physical
24 surveillance in the vicinity of this location and will help prevent the investigation from being
25 compromised.

26 3. There is reason to believe that disclosure of this Application, the Order, the pole
27 cameras and related equipment and dial-up telephone lines, and the ongoing investigation would
28 cause subjects of the investigation to change their methods, thereby preventing the FBI from

1 gathering evidence of criminal conduct and jeopardizing the ongoing investigation.

2 Therefore, I request that the Court issue an Order that:

3 1. Authorizes the FBI to maintain and continue to use video cameras and related
4 equipment and dial-up phone lines for a period of 90 days on the aforementioned utility pole
5 owned, leased, and/or maintained by PG&E, SBC, and/or AT&T in Alameda County,
6 California; and which,

7 2. Directs PG&E, SBC, and AT&T to furnish the FBI with any and all information,
8 facilities, and technical assistance necessary to unobtrusively accomplish the installation of the
9 pole cameras and related equipment and dial-up telephone lines on the aforementioned utility
10 pole no later than 14 days following the service of the Order by the FBI to PG&E, SBC, and/or
11 AT&T;

12 3. Directs PG&E, SBC, and/or AT&T to continue furnishing the FBI with any and
13 all information, facilities, and technical assistance necessary to operate and maintain the pole
14 cameras and related equipment and dial-up telephone lines on the aforementioned utility pole for
15 a period of 90 days from the date of this Order;

16 4. Directs the United States to compensate PG&E, SBC, and AT&T for reasonable
17 costs incurred in order to comply with the Court's Order;

18 5. Directs PG&E, SBC, AT&T, their agents and employees, or others to whom the
19 Order is disclosed, to not disclose the existence of the Application, Order, pole cameras and
20 related equipment and dial-up telephone lines, or the ongoing investigation to any person so as to
21 avoid compromising the ongoing criminal investigation;

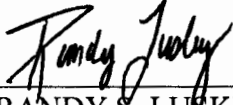
22 6. Directs the Clerk of the Court to file this Application and the Order under seal
23 until further Order of the Court, but requires the Clerk of Court to give copies of the sealed
24 documents to employees of the United States Attorney's Office, and that they be permitted to
25 serve working copies on Special Agents and other investigative and law enforcement officers of
26 the FBI, federally deputized state and local law enforcement officers, other government and
27 contract personnel acting under the supervision of such investigative or law enforcement officers,
28 and PG&E, SBC, AT&T as necessary to effectuate the Court's Order.

1 I declare under penalty of perjury that the foregoing factual assertions are true and correct
2 to the best of my knowledge and belief.

3 Executed on July 18, 2011 at San Francisco, California.

4 Respectfully submitted,

5 MELINDA HAAG
6 United States Attorney

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9 RANDY S. LUSKEY
10 Assistant United States Attorney
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